

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on January 22, 1999 at 8:00 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. E. P. "Pete" Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis Jr. (R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 164, 1/22/1999; SB 192,
1/22/1999
Executive Action: SB 110; SB 159; SB 192

HEARING ON SB 164

Sponsor: SENATOR KENNETH "KEN" MESAROS, SD 25, CASCADE

Proponents: Ralph Peck, Montana Department of Agriculture
John Bloomquist, Montana Stockgrowers Association
John Youngberg, Montana Farm Bureau

David Schulz, Madison County Weed Board
 Bob Gilbert, Rosebud County Weed Control Board
 Bob Stephens, Montana Grain Growers Association
 Jim Freeman, Cascade County
 Marty Malone, Park County Extension Service
 Art Hayes, Rosebud County Weed Board
 Ellen Woodbury, Park County Planning Director
 Fred Bell, Speaking for Himself
 Vince Thomas, Rosebud County Weed District
 Dave Burch, Jefferson County Weed Control
 Candace Payne, WIFE
 Bill Salisbury, Department of Transportation
 Ted Coffman, Madison County Commissioner
 Travis Chevallier, Park County Weed District
 Rep. Monica Lindeen, HD7, Billings

Opponents: Mike Foster, Montana Contractors Association

Opening Statement by Sponsor:

SEN. KENNETH MESAROS, SD. 25, Cascade, presented **SB 164** as a bill having to do with noxious weed control, the noxious weed trust fund, and creating more revenue to actively address this overwhelming problem in the state of Montana. He provided a handout on the noxious weed trust fund and administration of funding for control and prevention of noxious weeds in the state of Montana **EXHIBIT(tas17a01)** and a fund balance report for highway non-restricted funds **EXHIBIT(tas17a02)**. **SEN. MESAROS** also submitted an amendment **EXHIBIT(tas17a03)** for the committee's consideration which addressed one of the funding mechanisms. He said originally it was felt that funding could be obtained from the gas tax and the railcar tax, recognizing that vehicles and railroads are common carriers of noxious weeds. It was later learned that using the gas tax could jeopardize some of the federal matching construction funds, and he did not want to do that. This amendment changes those gas tax monies to a transfer from a nonrestricted account of the Department of Transportation.

SEN. MESAROS said that the goals of this legislation are to ratchet up the noxious weed trust fund from \$2.5 million to \$10 million, which should take about five years, and to retain the noxious weed trust fund and grant program. The amendment would transfer \$2.25 million from a highway nonrestricted account and reallocate the railcar tax towards noxious weed control. He said the object is to have the trust grow and expand the grant program, and still get more money to the local level for noxious weed control.

SEN. MESAROS explained that one-third of the funding from the highway nonrestricted fund, approximately \$750,000, and one-third from the railcar tax, approximately \$685,000, will be directed to the noxious weed trust fund for growth; one-third of the highway nonrestricted fund would go to the noxious weed trust advisory to allocate to the grants; and one-third of the highway nonrestricted fund, or approximately \$750,000, and 2/3 of the railcar tax would be divided equally among the 56 counties.

According to **SEN. MESAROS**, county districts must employ a full-time weed supervisor or create a cooperative agreement among the counties administered by the noxious weed advisory council of the Montana State Department of Agriculture. The noxious weed advisory council and the Montana State Department of Agriculture would coordinate with local weed districts to structure a high-quality, cost-effective program at local levels that would enhance the statewide plan with special emphasis on education and technical guidance at the local level. The counties must continue to levy not less than 1.6 mills or \$100,000 for a weed control program. Monies provided by this legislation can only be used for noxious weed control education and prevention.

SEN. MESAROS also said that he is recommending that the noxious weed management council be expanded by two members, one from the western part of the state and one from the eastern part of the state.

SEN. MESAROS reiterated that Montana has seen a rapid escalation of noxious weeds in the state, and this is an aggressive step to increase the funding for control. The economic impacts to the state are tremendous. He provided some university studies that show the economic impact to the state of Montana five years ago caused by noxious weeds **EXHIBIT(tas17a04)** and **EXHIBIT(tas17a05)**. He pointed out that the fiscal note for **SB 164** indicates an impact in excess of \$100 million yearly, and that does not consider the wildlife habitat. **SEN. MESAROS** said that the debate will be surrounding the funding source; however, he said he feels that with the huge influx of federal funding the Department of Transportation receives, there is a very convincing argument that the Department of Transportation's funding of \$2 million in the realm of a problem costing \$100 million is very appropriate.

Proponents' Testimony:

Ralph Peck, Director, Department of Agriculture, said that management and control of noxious weeds is one of the premier issues that Montanans need to address. He agreed with **SEN. MESAROS** that there is concern in regard to balancing the funding requirements with available revenue, and that the Department of

Agriculture does understand that the revenue estimating process is ongoing and will be a component in the resolution of the funding availability that is asked for in this bill.

John Bloomquist, Montana Stockgrowers Association, urged the legislature to consider that this is probably one of the major environmental issues in this state and it is not being addressed adequately. He testified in favor of this legislation.

John Youngberg, Montana Farm Bureau, said that noxious weed management has a tremendous effect on the bottom line for farmers and ranchers; therefore, Farm Bureau has made it one of their top priorities for this year. This problem is not just on farms and ranches, it is also a threat in Montana and in the Northwest to wildlife. He urged support of the bill.

David Schulz, rancher and weed supervisor, Madison County, passed out some pamphlets on noxious weeds **EXHIBIT(tas17a06), EXHIBIT(tas17a07),** and **EXHIBIT(tas17a08),** and said that he is also the recent past president of the Montana Weed Control Association and was appointed last week as the MWCA representative to the Governor's Montana Summit on Noxious Weeds. He said that a successful weed program is driven from the ground up, and that even with the great support of the Department of Agriculture, success can only be achieved by having every county in Montana doing everything they can to positively affect noxious weeds. The Vision 2020 plan, which was put in place several years ago and is a guideline under the Summit is to address education, prevention, management and help with the research of noxious weeds. This bill creates that opportunity.

Bob Gilbert, Lobbyist for Rosebud County, Board of Directors of the Montana Weed Control Association, Montana Noxious Weed Trust Fund Advisory Council, said that the county commission of Rosebud County asked that he appear on their behalf in support of this legislation. He said that with the recommended changes in the funding, it no longer will have an impact on the ability of DOT to match funds for federal highways, it will no longer have an impact on counties and cities as to their funding out of the gasoline tax; therefore, the bill provides a vehicle for the counties to fight weeds more effectively. Noxious weeds are the number one environmental problem in the state of Montana, and something needs to be done. He said he feels that this legislation will accomplish something positive.

Bob Stephens, Montana Grain Growers Association, said he feels that **SB 164** is the way to approach this problem and urged passage.

Jim Freeman, Weed Supervisor, Cascade County, former president of the Weed Control Association, testified that the cost of weed management continues to increase. He said this bill will provide dollars to the trust fund which will be available to the counties for direct support of their weed control operation, and it will provide continuing incentives for consistent and continuing leadership on the local level to full-time county weed supervisors.

Marty Malone, Vice President of the Montana Weed Control Association, and Extension Agent, Park County, said he has seen noxious weeds have a tremendous effect on private property. He said the only way to protect private land in Montana is to have a quality weed control program in every county.

Art Hayes Jr., Chairman, Rosebud County Weed District, said that the most important things in this bill are that there will be funds for the smaller counties to have a full-time weed supervisor, and it will allow counties to consolidate.

Ellen Woodbury, Planning Director, Park County, said that Park County requires weed control plans for all new subdivisions, but that they lack funds for enforcement and education. She urged support of this bill. She also submitted a letter from the **Park County Commissioners EXHIBIT(tas17a09)**.

Fred Bell, Licensed Real Estate Broker, said that he has done some developing and subdividing, and that he has participated in various organizations and the Summit, and subsequently the Montana Weed Control Association created an ex officio director position, which he fills. He said that he has learned that there is a need for funding for staff and equipment to "get it on the ground." He urged support for this bill.

Vince Thomas, Rosebud County Weed District, stressed that there is a great need for financial support for weed control programs. He urged support of this legislation so that counties could afford to actively fight noxious weeds.

Dave Burch, Jefferson County Weed District Coordinator, Spokesman for the Montana Weed Control Association's Supervisor Support Committee, testified in support of **SB 164**. He said that there are approximately 30 weed district supervisors in the state at present, which means that there are 26 counties which have either a part-time supervisor or no supervisor at all. **Mr. Burch** also told the committee that the Summit found that one of the top priorities for weed control was local leadership. He said all 56 counties now have noxious weed problems, and this bill would provide much needed funding and support for local weed control.

Candace Payne, Women Involved in Farm Economics, said her organization recognizes weed control as one of the top priority problems in the state of Montana, and on that basis urged support of this bill.

Mr. Bloomquist testified that **Rhonda Young, Montana Farmers Union**, and **Bob Gilbert, Montana Woolgrowers Association**, had asked him to register their support as well.

Bill Salisbury, Montana Department of Transportation, testified that the Department supports **SB 164** with the proposed amendments by **SEN. MESAROS**.

Ted Coffman, County Commissioner, Madison County, and **MaCo Ag Committee**, said that MaCo had asked for a resolution that asked for more funding from the state for noxious weed control, and Madison County and MaCo Ag Committee support the bill with the amendment.

Travis Chevallier, Park County Weed Board Chairman, urged support of **SB 164**.

Monica Lindeen, Representing HD 7, Billings, also urged the support of this important piece of legislation.

Gary Steinberg submitted written testimony in support of **SB 164 EXHIBIT (tas17a10)**.

Opponents' Testimony:

Mike Foster, Montana Contractors Association, commended **SEN. MESAROS** for addressing this very serious problem. He said **SEN. MESAROS** has been a friend of the construction industry, and his presentation of the amendment is further proof of that. **Mr. Foster** said that he had discussed with **Mr. Salisbury** of the Department of Transportation the fact that with the amendment there will be no effect on the federal matching requirements for highway construction in Montana, and that alleviates the Contractors' concerns about this bill if that is adopted. He said the bill as written does have a major impact on Montana's highway construction industry and therefore Montana's economy and families. He handed out a copy of pages 24 and 25 of the Montana Constitution, which is the section that deals with the non-diversion of highway trust money **EXHIBIT (tas17a11)**.

Mr. Foster then gave a very brief history of what's called T21, the Transportation Equity Act for the 21st Century, which was passed in June of 1998. When it was passed, Montana received a

61% increase in federal funding for highway construction. He said that translates into about \$100 million per year for the next six years. There is a matching requirement for those funds, and there is a highway trust fund that is designed to meet those federal matching requirements. **Mr. Foster** said that the match generally runs about \$87 of federal money to \$13 of state money. If there is not enough money in the trust fund to meet those matching requirements, then those federal dollars have to be turned back.

Mr. Foster then distributed a handout that shows the wage rates that are paid to highway construction workers **EXHIBIT(tas17a12)**. He said that the way the bill is written, it is a \$2.4 million hit on the trust fund. That translates, with the matching requirements, into about a \$21 million effect that it takes out of Montana's economy because of the matching. That would be, roughly, over \$40 million over the biennium. He said that the turnover for highway construction money in Montana is seven times, which reflects the impact on Montana's economy. He closed by urging the committee to adopt the amendment of **SEN. MESAROS** to **SB 164**. He said weed control is something that affects everyone and definitely needs to be controlled, but that care needs to be taken in how it's funded.

Questions from Committee Members and Responses:

SEN. BOHLINGER asked **SEN. MESAROS** to explain what he was asking for in the amendments and how they might relieve the concerns expressed by **Mr. Foster**. **SEN. MESAROS** said that the Contractors certainly raised a valid point in regard to the original bill as introduced. He said he definitely did not want to jeopardize that public funding in highway construction, and the amendment is directed to alleviate that concern specifically.

SEN. ECK asked **Mr. Salisbury** to explain what the non-restricted fund was and what it is used for ordinarily. **Mr. Salisbury** said that the money in that account comes from primarily two sources, the new car sales tax and certain GVW overweight fines and penalties. He said it is primarily used for some activities of the Department of Justice and the Highway Patrol. **SEN. ECK** then asked if there is adequate money there to address this issue, and **Mr. Salisbury** answered that there probably is over several biennium.

CHAIRMAN DEVLIN reiterated that this non-restricted fund is used for Highway Patrol funding and asked what else it is used for.

Mr. Salisbury said it is also used in the Department of Transportation for the state-funded program. **CHAIRMAN DEVLIN** asked how that vacancy is going to be backfilled. **Mr. Salisbury**

said that would be covered with the current budget proposal that's out there, with the additional federal aid, reducing the amount of state-funded programs and the proposal to move \$3.4 million from the Department of Justice to another funding source.

CHAIRMAN DEVLIN asked if that meant no impact on the Department of Transportation, and **Mr. Salisbury** said it was predicated on moving out \$3.4 million in the current Governor's budget proposal. If that does not happen, there would be an impact on the Department of Transportation. **CHAIRMAN DEVLIN** then asked if this was in the Governor's budget, and **Mr. Salisbury** said it was not.

SEN. STANG asked **SEN. MESAROS** if this would be restricted to counties that have either a 1.6 mill levy or \$100,000 in their current weed budget and have a full-time weed supervisor, and **SEN. MESAROS** answered that the 1.6 mills and the \$100,000 is current language. He said this bill states that counties that do not have a full-time supervisor must create a cooperative agreement or contract to hire a full-time supervisor to be eligible.

SEN. STANG then asked if the counties will be able to use this money to do that or if they would have to go to their county budgets or their local voters to get the money to do that, and if so, what would be the impact of **CI-75** on those counties that currently don't have a program. He asked if they would have to go to a vote of the people to fund that program, or will they be able to get funding from this legislation to form the program. **SEN. MESAROS** said it was his understanding that they will be able to come to this program if they have a signed contract to employ a full-time supervisor or enter into a co-op agreement.

SEN. DEPRATU asked whether this program would cover state and federal lands, and **SEN. MESAROS** said this bill does not have any effect on federal policy or federal lands. He said this program is directed towards the local weed control districts. He said that through the noxious weed trust fund there is a grant program established where several individuals or groups can form a working group and apply for a grant. Generally on state lands it's the responsibility of the lessee to protect those lands, and this legislation would help in that aspect.

SEN. GLASER asked about how many dollars were being talked about every two years and where it's coming from. He said that his figures show \$9.2 million new money every two years out of the General Fund, and he wondered if that was correct. **SEN. MESAROS** said the General Fund would be impacted. From the railcar tax it is \$2,130,000 in FY 2000 and \$2,153,000 in FY 2001. **SEN. GLASER** asked if the special non-restricted fund that is going to be

tapped is going to be backfilled from the General Fund, and **SEN. MESAROS** reiterated that the Department of Transportation testified that they can sustain this in their budget. **SEN. GLASER** then asked **Mr. Salisbury** if it will come from the General Fund, and **Mr. Salisbury** answered that he didn't know how the executive budget plans to backfill that \$3.4 million in the Department of Justice. Right now it is in the budget to do it with General Fund money.

SEN. ELLINGSON then asked **Mr. Salisbury** if the Department of Transportation had to have a noxious weed program in place in order to be in compliance with the law. **Mr. Salisbury** said that the Department does have a program, and it is the Department's hope that in the long run this legislation would decrease the Department's cost. **SEN. ELLINGSON** then asked if anything is done at the borders to prevent the spread of noxious weeds from other states, and **Mr. Salisbury** said that the state does not do any spraying, that they contract with the counties. He said it is the counties' responsibility to spray right-of-way at the borders. **CHAIRMAN DEVLIN** asked how much money is being spent on the contracting program with the counties, and **Mr. Salisbury** said that he would have to check for specifics, but that that figure approaches \$1 million a year.

SEN. ECK said she recalled that someone had mentioned that Rosebud County got a \$250,000 grant to address weed control, and she wanted to know what that amount of money accomplished. **Mr. Hayes** answered by saying that to get federal funds to rebuild the Tongue River Dam, they had to put in \$3.5 million of wildlife enhancement money. Out of the \$3.5 million, four counties, Rosebud, Big Horn, Custer and Powder River, and the Northern Cheyenne formed a group called the Tongue River Basin Weed Group. He said they are receiving this money in \$50,000-a-year increments, and they are trying to establish a basin-wide weed plan with this \$250,000. This money came from the wildlife enhancement fund money. **SEN. ECK** asked if they would have any idea when this kind of an effort will actually make a difference, and **Mr. Hayes** answered that it is making a difference now. From this money they are funding two full-time people with a matching grant from the noxious weed trust fund to spray. Rosebud County and Big Horn County will be putting in for a grant from the noxious weed trust fund that will be matched by this Tongue River Basin Group to have two people spraying in Big Horn County. He said it has already made a big difference.

Closing by Sponsor:

SEN. MESAROS indicated that there was strong support for the legislation and that the amendment clarified any misgivings by

the Contractors. He said he was aware of the magnitude of the fiscal note, but in the scheme of things, relatively speaking, the cost of investment that can be provided today to fund the local level and provide a concentrated effort on a statewide level with special emphasis on education and technical guidance, he feels that it's a good investment.

HEARING ON SB 192

Sponsor: SENATOR JOHN BOHLINGER, SD 7, BILLINGS

Proponents: Bruce Hofmann, Western Technology Partners
Chris Dimock, Western Technology Partners
Rep. Monica Lindeen, HD 7 and MCN
John Fitzpatrick, Touch America
Barbara Ranf, US West

Opponents: None

Informational Testimony: Mike Boyer, Department of Revenue

Opening Statement by Sponsor:

SEN. JOHN BOHLINGER, SD 7, Billings, introduced **SB 192** as an act to clarify taxation on internet access providers. He said that through this bill we are attempting to fix present law that has become obsolete because of technology and address a question of fairness. He went on to say that the telephone license tax was originally drafted in the 1960s, long before anyone had an idea of internet access service, and what has happened is that our economy has expanded and small businesses have evolved beyond the intent of this original legislation.

SEN. BOHLINGER said that the intent of the original legislation was to provide a revenue stream for funding the activities of the Public Service Commission which is the oversight organization for telephone companies. Based on this, it is only natural for telephone companies to pay the tax. However, the Public Service Commission does not regulate or have oversight responsibilities over internet access providers. He said that under present law, internet service providers have to pay to fund the Public Service Commission but they receive no representation.

Presently, under MCA 15-53-101, **SEN. BOHLINGER** said that the Department of Revenue includes internet service providers in their definition of telephone business and therefore subjects them to a license tax of 1.8% of gross revenues. Under 15-53-101, the term "telephone business" means access and transport for hire of two-way communications originating from a point of access

to a point of termination both within the state of Montana. He said he believes that local access internet providers do not engage in telephone business. They do not access or transport two-way communication from a point within Montana to a termination point within Montana. These local providers of internet access provide a service allowing local customers to use their equipment to enter and use an international network of computers. The two-way communication brokered by local internet providers begins but does not end in the state of Montana.

SEN. BOHLINGER said that because of the nature of the service provided by internet access providers, they're not in the telephone business as contemplated by 15-53-101. The Department of Revenue extended the application of this tax beyond the service contemplated by the Legislature back in the '60s when this tax was originally placed on telephone companies.

Furthermore, **SEN. BOHLINGER** said, the telephone license tax is a hidden tax. It's hidden in that the telephone company pays the tax which is then passed on to the customer in the form of higher rates. Internet service providers purchase telephone lines just like any other Montanan, pay the tax, and then as an internet provider is required to pay the 1.8% gross revenue tax, so it becomes a case of double taxation.

Speaking of the question of fairness, **SEN. BOHLINGER** pointed out that presently under Montana law, only Montana internet providers are subject to this tax. Companies like America on Line, Prodigy and Compuserve are not. The tax is harmful to this price-sensitive emerging industry. By enacting **SB 192**, we can encourage local internet providers, a clean, high-tech industry that provides living-wage jobs to the Montana economy. Computer services are one of the keys building our Montana economy. This exemption will let everyone out there know that Montana wants to grow high-tech business.

Proponents' Testimony:

Bruce Hofmann, Western Technology Partners, Billings, reiterated what **SEN. BOHLINGER** testified to. He said that as an internet provider, he purchases telephone lines just like a residential customer buys lines, and he pays the 1.8% tax on those lines. However, then when he uses that line as an internet provider, he has to pay again the 1.8% of his revenue, so he gets hit twice on the same line. He said that internet companies are not telephone companies. They do not own telephone lines, they lease or rent other companies' lines; internet companies do not originate dial tones; they are not tarified by the state; they are not regulated by the Public Service Commission. He said he hopes that this

legislation will make that distinction between telephone companies and internet access providers and stop this double taxation and update the Code. He provided written testimony **EXHIBIT (tas17a13)**.

Chris Dimock, Western Technology Partners, Billings, testified that internet service providers have two arguments against the telephone license tax being applied to them. First, internet service providers do not provide the kind of service that's specified in the statutes to which the tax applies. Internet service providers provide a connection for people in the state of Montana to information throughout the world. As the license tax is written, the tax applies to companies that provide telecommunication service for hire for two-way communications from point of access to point of termination, both of which are within Montana. Internet service providers simply provide a transfer of the actual delivery mechanism over telephone lines.

Mr. Dimock said the second argument is that it is unfairly applied to internet service providers, but it is also a gross revenue tax, 1.8% of gross revenue. Gross revenue taxes have a very harmful impact on an industry that has very small margins, and this makes it difficult to compete in the rural markets. Consequently, there is a substantial impact on the state of Montana because the vast majority of the geographic area is rural markets. He said that that means that there is usually just one private internet service provider that can serve an area, and there is no incentive through competition to keep rates low since you have to recover a fairly high cost of providing that service.

Mr. Dimock went on to say that internet service providers are a clean industry, which pays high wages and provides a net inflow of cash into the state. Internet service providers offer opportunities to advertise wholesale and retail businesses in the state to consumers around the country and the world. He urged support of **SB 192**.

REP. MONICA LINDEEN, HD 7, Billings, said that when she is not in the Legislature, she is a small businesswoman in business as Montana Communications Network, also known as MCN. She said their corporate offices are located in Billings, and they are an internet service provider. **Rep. Lindeen** said that MCN has over 12,000 customers in 100 communities in the state of Montana. They have 38 employees who make an hourly wage above minimum wage, or if they are salaried, above the state average in salaries. They also have good benefits, including 401K pension and health care insurance. Internet service providers have a strong, positive impact on Montana's economy. In 1998, MCN alone had close to a \$2.5 million impact on the state.

John Fitzpatrick, Touch America, said Touch America is the telecommunications subsidiary of Montana Power Company and is an internet provider. Internet service providers have relatively high capital costs involved in getting into the business. Equipment is very expensive to buy, and it represents a major investment. He said it is also an incredibly competitive business and profit margins are very, very low, typically on the order of 4% to 6%. When these companies have to pay a 1.8% gross revenue tax, this translates into a 25% to 40% hit on their bottom lines in terms of net profit. He encouraged passage of **SB 192**.

Barbara Ranf, US West, said that US West also provides internet services in the state of Montana. She said there seems to be a lot of confusion of whether the telephone license tax can be applied to internet access servers. This past fall Congress put a three-year moratorium on taxes applied to internet service providers. These businesses cannot be taxed by a state unless there was such a tax generally imposed and actually enforced prior to October 1 of 1998. US West's interpretation of this Act is that the telephone license tax was not generally imposed and actually enforced on internet access services prior to that date, and US West does not believe that they can be taxed in this state. She said US West supports **SB 192**.

Opponents' Testimony: None

Informational Testimony:

Mike Boyer, Department of Revenue, said that the Department administers the telephone license tax, and in recent years has collected approximately \$6 million annually under the existing law. The Department has contacted internet service providers, informing them that some portion of their service qualifies as gross revenue under the present law and is subject to taxation. He said certain activities do qualify under the existing definition of telephone business. **Mr. Boyer** said that the Governor's tax reform proposal seeks to eliminate the telephone license tax in its entirety. Should that portion of the proposal fail to become law, the Department will seek legislation to expand the telephone license tax to provide a level playing field for all providers of telecommunication services, including internet service providers.

Questions from Committee Members and Responses:

SEN. ECK asked the Department how much it costs to administer the present impact of \$20,000 collected from internet service

providers, and **Mr. Walborn, Department of Revenue**, said he did not have available what the cost was for this particular portion of the telephone license tax, but that he would find out and provide that at a later time. **SEN. ECK** then asked about the Congressional action that might render this tax an illegal tax according to federal law, and **Mr. Walborn** stated that there is a difference of opinion on the Department's ability to collect the tax that is presently being collected. Basically the Department feels that they were collecting the tax prior to the federal deadline. **SEN. ECK** then asked how many other bills are pending that relate to internet service providers, and **Mr. Walborn** said he wasn't sure but that he would provide that information to the committee.

SEN. GLASER asked **Mr. Boyer** whether co-ops are subject to this telephone license tax, and **Mr. Boyer** replied that all providers with origination and termination within the state are subject to this tax under the existing law. In the event that the reform proposal does not go through, there is legislation that would extend that definition to external parties as well, including cooperatives and internet providers. **SEN. GLASER** said he was interested in who is paying this tax and who isn't. He said that obviously US West is paying and the small internet providers are paying, but AT&T and American on Line are not, which means that there is not a level playing field. **Mr. Boyer** said that encapsulates a lot of the issues surrounding this legislation. **SEN. GLASER** said if that's the case, and only \$20,000 is being collected, considering the cost of administration, that perhaps it should be eliminated. **Mr. Boyer** said that the Governor's proposal does eliminate this tax.

SEN. STANG then asked why some people are paying the tax and some are not, and **Mr. Walborn** said that there are currently seven providers paying the tax, resulting in the \$21,000 a year. The Department is in a position to try to enforce the collection of the tax with the other internet service providers, and they are at a point of trying to collect from everyone else who the Department thinks fits this tax. If these parties pay the tax, the Department estimates that it could result in future years net as much as \$100,000 to \$300,000. **SEN. STANG** then asked why these seven companies are paying the tax and others are not, and **Mr. Walborn** said that that is part of the enforcement that the Department is trying to do, to capture these other companies. **SEN. DEVLIN** asked whether it would have anything to do with out-of-state headquarters, and **Mr. Walborn** said that did have an influence.

SEN. STANG then asked if it was true that these people are paying the tax twice, that the internet provider pays on their line charge and the person who has the phone line in their residence is also paying, and **Mr. Walborn** said that today was the first he had heard about that, but that it could be possible that a portion of that tax is passed through that way. **SEN. STANG** asked why these seven companies are paying the tax and the rest have not even been assessed, and **Mr. Walborn** said that the Department has identified those people and under their current tax laws, the Department would be able to do back assessments. He said the Department's enforcement efforts could be better and could be more timely, but that they can go back and collect for that period of noncollection. **SEN. STANG** asked if the Department intends to make those people pay the back taxes, or does the Department intend to refund the taxes to the people who paid it, and **Mr. Walborn** answered that the Department intends to enforce it in the future. He said he would have to check into the back assessments.

SEN. GLASER asked what percentage of an FTE is working on this portion of the telephone license tax, and **Mr. Walborn** said that it is part of the Department's miscellaneous business taxes and there is not an FTE specifically for this purpose.

SEN. ELLINGSON asked **Mr. Walborn** if the Department has identified the other internet providers that will be assessed and whether that includes the out-of-state providers like America on Line and Compuserve. **Mr. Walborn** said the Department has identified these other providers and have notified them of the intention to enforce the collection of those taxes. Compuserve does pay the tax presently. **SEN. ELLINGSON** said he would like the Department's position on collecting back taxes in the event that this passes out of committee and eliminates the tax. He said he wanted to know if there was going to be any relationship to the Department's position of collecting back taxes if that happens. **Mr. Walborn** said he would have to check on that aspect.

CHAIRMAN DEVLIN asked if the \$21,000 on the fiscal note includes the companies from whom they have not collected, and **Mr. Walborn** said it does not. It only represents the seven providers collected from at this time.

SEN. EKEGREN asked why these seven should pay when so many others are not paying, and **Mr. Walborn** said at present the Department depends on voluntary compliance. He said that the purpose of the bill is to make sure that the playing field is level. If it doesn't pass, it's a matter of the Department enforcing and collecting those taxes from those others.

SEN. ECK then asked if there is a study underway which looks at the impact of the internet on the economy and revenues lost because of business transacted over the internet, and **Mr. Boyer** said he could not speak to any specific studies about the magnitude of internet business on the tax base and the effect of that on tax revenues. **SEN. ECK** asked whether internet business was addressed in the work of the Revenue Oversight Committee, and **Mr. Boyer** said he didn't know.

SEN. ELLIS asked what mechanism the Department had to require entities like AT&T, Compuserve and other out-of-state entities to pay this tax, and **Mr. Walborn** said it boils down to the matter of missing the other people that were not being taxed and the voluntary compliance, and the Department is following up on that. **SEN. ELLIS** asked if there was anything that enables the Department to do that, and **Mr. Walborn** said that he believes that it would come under the general provisions of taxation to enforce these type of situations.

Closing by Sponsor:

SEN. BOHLINGER said that he felt that the hearing had provided a good understanding about what this bill is about, which is our attempt to fix present law which has become obsolete, and to address this question of fairness. He summarized some of the comments of the various proponents and asked the committee to act favorably on the bill.

EXECUTIVE ACTION ON SB 192

Motion/Vote: **SEN. DEPRATU** moved that **SB 192 DO PASS**. Motion carried 9-0.

DISCUSSION ON SB 164

CHAIRMAN DEVLIN prompted a discussion on **SB 164** by saying that this bill is a distribution of money. He said there isn't any new tax in this bill, and that it shouldn't have come to the Taxation Committee, but belongs in Finance and Claims. He wondered if the Taxation Committee would be remiss if they did not send it there.

SEN. GLASER said he didn't think the Taxation Committee was in the position to prioritize. He said he thought Taxation should give Finance and Claims our advice. **CHAIRMAN DEVLIN** said that Finance and Claims would have to have a hearing and he was sure they would welcome any advice. He also said that this legislation doesn't put any new taxes on, it just redistributes. He said when you get into redistributing this amount of money,

you really impact what is done in finance and claims and appropriations. **SEN. ELLIS** suggested that the Taxation Committee act on the bill in some form because of the number of people who appeared before the committee regarding this bill, and then make the recommendation of transferring it to finance and claims on the floor.

SEN. ECK asked what the impact was on the General Fund, and **CHAIRMAN DEVLIN** said that the impact comes when they have to backfill for the Highway Patrol. **SEN. ECK** said that she was under the impression from the Department of Transportation representative that even if they continued funding what they're now funding, that they had enough money to cover this.

SEN. STANG suggested that **CHAIRMAN DEVLIN** take the bill to **SEN. SWYSGOOD, Chairman, Finance and Claims Committee**, and have him review it and give his comments as to whether Finance and Claims would like to look at it. If **SEN. SWYSGOOD** thinks that members of Finance and Claims understand where that money is going to and coming from without sending it down there, that's fine; if not, maybe they'd like to hold another hearing. **CHAIRMAN DEVLIN** said that's what he would endeavor to do.

SEN. ECK said the Department should be required to provide a cost benefit analysis showing results of these projects. **SEN. ELLIS** made a statement that this whole problem is rampant in Montana and that funds should not be diverted to analysis when it could be applied to the problem.

CHAIRMAN DEVLIN said he was going to take **SEN. STANG'S** suggestion to talk to the chairman of Finance and Claims and see what he thinks. **SEN. ELLINGSON** suggested that when **CHAIRMAN DEVLIN** talks with **SEN. SWYSGOOD** about this bill he mention that some of the members of the Taxation Committee did not feel they got some straight answers from the Department of Transportation about that \$2 million, and if they can take \$2 million out of some special account and it's not going to have a General Fund impact, how much more is in that account and where is it going now and is it available for other purposes.

EXECUTIVE ACTION ON SB 110

Motion/Vote: **SEN. STANG** moved that SB 110 DO PASS. Motion passed 8-1 with Glaser voting no.

EXECUTIVE ACTION ON SB 159

CHAIRMAN DEVLIN handed out a memo from **Mary Bryson, Director, Department of Revenue**, regarding the use of credit cards for payment of taxes at the county level **EXHIBIT(tas17a14)**, and a sheet showing the breakdown of credit card usage by the counties provided by **Gordon Morris, Montana Association of Counties, EXHIBIT(tas17a15)**, provided in response to questions of the committee at the time of hearing on **SB 159**. **SEN. ELLIS** said that his information supported the information that Missoula County is using it the most extensively. **SEN. GLASER** said that in his figuring, if every county did this, the reduction in revenue statewide would be \$20 million.

Motion: **SEN. DEPRATU** moved that **AMENDMENT 15901.ALH DO PASS**.

Discussion:

SEN. STANG asked whether the bill requires the counties to discount it and the amendment just specifies where the county may take it from, and **CHAIRMAN DEVLIN** answered that that was correct. **SEN. STANG** then asked whether the county was still required by the bill to discount it with these amendments on it, and **CHAIRMAN DEVLIN** said that was correct.

SEN. ELLIS asked **Mr. Heiman** to explain the amendments. **Mr. Heiman** said the bill actually consists of six sections which are basically identical. They simply provide that the governing body, whether it's the state agency that's picking it up or the county, to determine for those collections where the cost of that goes, whether it goes to the agency that's running the cards through the machine or whether it goes to the agency that gets the money that's collected from the cards. **SEN. ELLINGSON** asked whether it requires that it be paid by a particular agency, and **Mr. Heiman** said it requires that, for instance, the county commission make a policy to decide who is going to pay for it, and it can be paid either by the administrative body or by the receiving body.

SEN. ECK asked if we still keep the provision that if they accept payment by credit cards, they have to discount the amounts paid by cash or check, and **CHAIRMAN DEVLIN** affirmed that.

Vote: Motion carried 9-0.

Motion: **SEN. GLASER** moved that **SB 159 DO PASS AS AMENDED**.

Discussion:

SEN. STANG said that his problem with the bill is that the legislature is telling the county governments what they have to do. He said he feels that it is a decision that the counties must make for themselves.

SEN. ELLIS said he somewhat agrees with **SEN. STANG** because if counties feel this is a good thing to do, they ought to have the freedom to do it. He said the committee heard testimony that charging the additional amount of the fee really wasn't a legitimate practice. He said he had asked the Missoula County Treasurer what they did, and he was told that they decreased all the allocations by the cost of the service. He tried to find out what the cost of the service was and they never got back to him on that. He questioned whether the state would want to take the kind of hit that's involved if every county accepted credit cards for every tax or fee. **CHAIRMAN DEVLIN** said that the information provided by the Department of Revenue indicates that most property taxes are paid by escrow and come in one check.

SEN. ECK said that for counties and for state government, there are probably smaller payments that are made where it would be cost effective to use credit cards. She said that most businesses feel that it's well worth the 2% fee to offer that. She suggested that the counties and state provide justification for the use of credit cards. **CHAIRMAN DEVLIN** said that counties at this time don't charge a person that's using a credit card any fee on top of the bill being paid, so it's taken out of the county budget. He said that it's a matter of fairness. If a county pays a bank for collection of bills through a credit card, then the person who pays with cash or credit should get the same consideration.

SEN. BOHLINGER said he is very supportive of this bill. He said that he feels that the discounts paid are costs that can be reduced through successful negotiation. He said that in his experience in business, when the improvement in cash flow and the availability of immediate cash is considered, it is worth the fee, and that fee could be negotiated as use increases.

SEN. ELLINGSON said he was going to vote against the bill because he can foresee that there are certain counties that may be absorbing the costs of this themselves, and that it's worth their while because of the increased cash flow and not having to try to collect bad checks. He said that the way it's presented right now, even if they were absorbing it, they would have to give a credit to all of the other taxpayers in the county. For that reason, he opposed the bill.

Vote: Motion carried 6-3 with Eck, Ellingson and Stang voting no.

CHAIRMAN DEVLIN reminded the committee of the joint session with the House next Wednesday, January 27, to discuss sales tax options and taxation of the deregulated utilities and the deregulated telecommunications. He said it will probably take about three to three-and-a-half hours, and will be helpful when these bills start coming to this committee.

ADJOURNMENT

Adjournment: 10:15 A.M.

SEN. GERRY DEVLIN, Chairman

SANDY BARNES, Secretary

GD/SB

EXHIBIT (tas17aad)